

LAKE COUNTY PLANNING BOARD
August 8, 2018
Lake County Courthouse, Large Conference Room (Rm 316)
Meeting Minutes

MEMBERS PRESENT: Steve Rosso, John Fleming, Frank Mutch, Janet Camel, Abigail Feiler

STAFF PRESENT: Jacob Feistner, Lita Fonda; Wally Congdon

Steve Rosso called the meeting to order at 7:10pm.

RIGHT TO FARM (7:10 pm)

Jacob Feistner presented the staff memo. (See attachments to minutes in the August 2018 meeting file for staff report.)

Steve:

- Have the ‘whereas’ section become the ‘resolution’ section.
- Add a title and begin the policy where the 1.Policy Statement on pg. 3 currently began.
- Starting with 2.a on pg. 4, move the small Roman numerals to an addendum, and add an appropriate title to the section. The last sentence of j on pg. 9 would move with the Roman numerals.
- Add an ‘implementation’ section, in which #3, #4 and #5 would be contained. These didn’t describe the policy; these said how the policy would be communicated or implemented.
- Attach section #6 to the end of the ‘resolution’ section. The ‘resolution’ section would be separate from the policy, so it would look like the resolutions the Board saw with the growth policy and so forth.

John thought that was good. They also needed to make sure they weren’t creating a land use for farmers and ranchers. Cell towers were an example. That was a land use, not an agricultural activity. Frank thought the cell tower item was looking for a home and wasn’t sure that this was it. Maybe it could be an ancillary use anywhere. His concern was no one regulated those and they could look better. He recalled Janet had mentioned frequency was an issue. Jacob noted this would be considered a commercial use. John thought they needed something about cell towers but it didn’t belong in Right to Farm.

Frank pointed to other uses such as windmills, solar farms and helicopter pads. Abigail thought when someone wanted to install a cell tower or wireless communication, it should go through a process. It shouldn’t be one of the rights to farm. Steve thought that sounded like county-wide zoning with cell towers as a conditional use. Frank suggested a regulation could be written that specifically talked about cell towers. Wally said this was recognized as an ancillary use here because the income from a cell tower made the difference between selling the farm or not. It wasn’t intended to encourage cell towers. It was one of a multitude of ancillary functions. Janet said they could still be allowed under overlay zoning. Wally said the same was true for wind

farms. It didn't prevent people from doing agriculture. It was just an ancillary use of the ground that people farmed around that made income for people.

Janet said she didn't have a problem with the solar generation unless they were really tall. Steve remarked that people complained about them due to lots of reflection. Abigail mentioned concerns about the waves from the wireless towers. With these kinds of things, and with cell towers more so than a solar panel, [the neighbors] should be able to have a say, even if it was something [the farmers/ranchers] wanted or needed for income. Janet agreed. Some of these ancillary uses got into commercial development. Some of the facilities could be huge, including hydroponic or aquaphonic facilities. With a non-agricultural cell tower proposal in an unzoned area, Steve asked if something stopped those people. Various people said no. Steve said if things were restricted in other places that needed to be allowed on a farm in order to make farming viable then maybe those belonged in here. If they were allowed anywhere, whether or not you had a farm or ranch, they didn't need to be in here. They didn't want to allow things to happen on farms and ranches just because they were farms and ranches and not allow them somewhere else. Wally agreed that wasn't the path.

Frank thought that's what Right to Farm policy generally was. He gave another example of a retreat center. Those weren't allowed in some of the zoning districts. In here, if someone wanted to have a retreat center that involved farming or ranching, it was encouraged. That was a problem for him. They needed to make sure they didn't cross the line of encouraging [something that was outlawed]. Wally noted this didn't change the zoning districts. It wasn't a regulation. It said that if agro-tourism made it pencil, it was an acknowledged and legitimate use. The same was true with interns. That was part of sustainable agriculture. Both of these needed a second building to do it. It wasn't an effort to make a slippery slope for commercial. Agriculture did happen to be commercial but the issue wasn't commercial. The issue was what you said you could or shouldn't be able to do.

Janet referred to the definition of commercial and pointed to the difference between raising and storing crops and commercial development that generated a lot of traffic, such as sales areas. A vineyard or a fruit stand was very small for a certain season of the year. It wasn't a major commercial development. She had problems with vii onward, on pg. 9. They didn't need to give the examples. She liked the language in vi about 'properly licensed'. Abigail suggested taking out v through xi. Frank said these were guidelines. Abigail said if these were taken out, someone who wanted to do this on their property could still look into it. John said they weren't writing this to create rights for farmers that other people couldn't have. Wally agreed. Steve said one main purposes of this was to protect a farmer/rancher from complaints about standard operations from residents of newly created subdivisions next to agricultural land. The problem was if this rancher decided to stop ranching and put up cell towers and wind towers for income (as opposed to uses associated with the property). Would this prevent the neighbors from complaining? Frank thought the argument was this helped to keep lands open and to preserve agricultural lands. Wally said the list was of different things he saw people do that kept them in business. Abigail suggested they delete the examples. Wally said it was fine to take them out. They were there to give people ideas. Few people were left who made a living at farming. It was hard to make it pencil. These were uses ancillary to farming. Something like a wind tower didn't support the farm [as part of operations] but did support the farm because the check paid

for the tractors. [A wind tower] wasn't ancillary and wasn't agriculture but at the same time supported it. Abigail said this policy would be handed out. It was basically a sales pitch on what you could do on your farm. Did it say how big a farm had to be? You could have a half-acre 'farm' with a cell tower where you were just farming a cell tower. She and Wally agreed you could make a living on a half-acre farm. Abigail thought a lot of people would take advantage.

Regarding cell towers, Janet said regulations might be coming. The airspace hadn't been adjudicated. John reminded they were trying to isolate a Right to Farm and Ranch policy, not regulate stuff. He returned to getting a 'Whereas' section, a policy section and then have an addendum section.

Steve mentioned the regulations from Finley Point and East Shore that allowed for sales of raw produce without the processing. Someone could do the processing but not sell the processed product on site. They had to ship it somewhere else. Frank said they could do that in non-zoned areas. They could specify in the policy that a sales area would be for unprocessed agricultural products. Janet thought they could leave the first few items on pg. 9 and not get into processing or production, which would get into a lot of detail. Steve noted they weren't stopping people from doing [those listed items]. They were saying if someone changed the use of their traditional farm or ranch to include some of these operations, it was okay for the neighbors who had been there for a while to complain.

Frank suggested replacing k, pg. 9, with, "These facilities should be limited and not industrial in nature. Appropriate design and construction standards are required for all such ancillary development in concert with the scenic and rural character of the area. Zoning regulations still apply." Abigail asked who would write the regulations for those things. She suggested removing section j on pg. 9. Steve said k had to do with considering design standards in subdivisions, so k stood alone. He thought Frank's suggested paragraph would follow examples that they might leave in the ancillary list, which might move into the addendum. A sentence in j might say, "These ancillary practices are not meant to replace agricultural uses." Jacob noted it did say 'uses associated with agricultural practices'. Steve thought they should spell out that you couldn't convert agriculture to industrial or commercial. Wally agreed that wasn't the purpose.

Pg. 9, j:

- Janet: Remove 'ancillary uses and other' in the 2nd and 3rd lines.
- Steve: Remove 'ancillary development and' before 'uses' and add 'associated with agricultural practices' after 'uses'.
- Group: Move iii elsewhere.
- Group discussion regarding iv: Remove this, since this involved just growing the crop.
- Group discussion regarding ii: Add 'raised by the owner or leasee of the premises that are not industrial in nature'. Jacob noted that the general statement that began j required compliance with applicable regulations, which covered some concerns. Wally gave an example to illustrate that the Dept. of Revenue considered the potato storage of John's potatoes in John's storage building as agricultural. If John also stored Steve's potatoes in his barn, that was taxed as commercial.
- Janet:
 - Move iii elsewhere and remove iv through xi, except for v.

- Reword v ‘Small scale fruit and/or vegetable stands. Also renumber.

Jacob reminded that this document would be used as advisory when making regulations for zoning, buildings for lease or rent, or subdivisions. If something was specifically listed, it backed its inclusion in zoning.

- Frank, vi: Leave it in [as j.iv]. Jacob noted the planners received more questions on vineyards in the last few years.

The group briefly discussed the other items in section j to be eliminated. More discussion also occurred on what listing an item in the document represented. Abigail and Steve said by not listing something in the document, this didn’t say you couldn’t do it. The document showed what they were encouraging. Frank said if this applied to the whole county, if you said you could only sell items raised on the premises, you were telling the ones who were already doing [otherwise] that they couldn’t. Steve clarified if they protected [an item such as a farmers market] in this document, the neighbors couldn’t complain. [By not listing such an item,] it didn’t say that you couldn’t have a farmers market. If you had one and raised a neighborhood problem, the neighbors were allowed to call the sheriff to investigate. Wally said that was the policy cut of the document. He gave an example where CDBG was trying to build a pavilion at the fairgrounds. If one use of the building could be to have a farmers market, applying for the money helped solve the problem of having a farmers market without screwing up the neighborhood. It was a policy cut document where they didn’t want to encourage that on the East Shore, blocking traffic on Hwy 35. They did want to encourage it in a centralized location. That was a policy cut. [A farmers market] was different than a farm stand to sell your stuff.

- Steve, pg. 7, d.ii: At the end of the paragraph, add ‘, including use of approved biological controls’ since pg.9, j.iii was to be moved, Wally gave the example of using goats for biological controls.

Jacob, pg. 9, j.iii: Add ‘for produce raised by the owner or leasee on the premises’ to the end. Janet suggested leaving it at small scale fruit and/or vegetable stands. What if two neighbors wanted to have one stand? Steve said they weren’t stopped from doing that. If it got too big, the neighbors could legitimately complain. Frank was concerned that these regulations would cover the county and make it difficult for a person he knew with a fruit stand who carried things like huckleberries and Washington cherries. Steve highlighted that these weren’t regulations. Frank preferred to leave out that restriction.

Janet double-checked with the group that they were renumbering j.vi as j.iv and leaving out the rest, as discussed earlier. The group concurred. The group also left out agro-tourism. The original numbers kept were i and ii (with an addition), with the original iii, iv and v taken out. A new iii was created about small scale fruit and/or vegetable stands, and vi became iv. The rest were eliminated. Janet reminded of the wording changes done earlier in j.

- Janet pg. 9, i: She noted that not all open irrigation waters had legal rights of way. Abigail observed it said you had to have rights to the water to use it. Lita offered a rewritten version of i: “Hazards exist in an agricultural environment from items such as

farm equipment, irrigation hazards from ditches, seepage, pumps and operations, electrical fences, agricultural chemicals, and animals including dogs and livestock. These present real threats to children and adults. Controlling children's activities should take this into account." The group replaces the original i with this.

Frank returned to the 'Whereas' section. He wanted to make sure the [section from the state] constitution remained in [the policy]. It wasn't efficient to sit here and rewrite it. He delegated that to Planning staff. Steve described that the policy would need to start with a title at the top of the page and maybe an introductory paragraph where article XII, part XII of the Montana State Constitution was included.

In #2, which started on pg. 4, Steve asked what people thought of moving the examples to an addendum. Janet and Frank were in favor. Frank said the list he'd made should be in an addendum as well. Steve suggested following the policy section, which was basically #1 and #2, with a section called 'Implementation' that would include sections 3 through 6, which were the way the policy would be communicated and implemented rather than the actual policy. Jacob checked that this section would be renumbered starting with 1. Steve pointed to 4.e on pg. 10 as the place for Frank's list. Janet requested that the CS&KT Tribal Stock Growers be added to the list. Frank touched on his methodology for putting together the list and read it. He included government and NGO groups.

Janet relayed a general concern from the Tribal legal department was that there was no mention of the Flathead Indian Reservation, the Tribes, Indian agriculture, the Flathead Indian Irrigation Project (FIIP) or the Federal law and regulation. She understood this was a County document driven by State. The concern was that this was an exclusive reliance on County and State law without taking into account the Federal law and regulations. Most of the agriculture in Lake County was on the reservation and the same with the irrigation project. She didn't know if they could make a general statement to recognize that the majority of the agricultural lands lay within the Flathead Indian Reservation, and that work with the Tribes to protect farmland was important, and to recognize the FIIP as an important component, and so forth. Wally said that was a doable thing. Steve thought they could add it as a 'Whereas'. It could also be part of the policy statement.

Two discussions took place. One involved Frank's list. The other involved brief wording from Janet that could be possibly put in the opening introductory paragraph of the policy along with the statement about the state constitution. Janet suggested that this go in a 'Whereas' also.

Steve referred to the significant changes in the layout of this document. The Board would need to see this again. The Board members thanked Jacob for the work done on this and the work about to be done on this. Janet was concerned about meeting the timeline to get something to Jacob. Wally offered to write something and send it to Janet for review. Jacob suggested that Wally could write something and it could be reviewed with the draft and then adjusted at that time. Wally mentioned a related conversation at a Bison Range meeting today. Jacob said he hoped to get a draft out early again. If Wally wrote [the statement], he might be able to get it out to the Board sooner.

Lita asked about mentioning a few of the comments that she'd made upon request. She suggested taking out the 4th 'Whereas', which was examples, particularly since an appendix with examples would exist. Steve said with a 'Whereas' section and a policy section, some things needed to be said in both. Wally responded no when Frank asked if the Commissioners had reviewed the 'Whereas' statements. Jacob said this had been crafted in 2016 with LaDana.

Policy statement section:

- Lita, pg. 3, 1.a.i: Eliminate this as it restated 1.a in more detail with examples and seemed redundant to 1.a.
- Lita, pg. 4, 1.c: Add 'required to operate lawfully and' after 'producers are'. End the section after 'when operating'. The group accepted this change.
- Lita, pg. 4, 1.d: Remove this since with the change in 1.c, it would now be included there. The group accepted this change.
- Lita, pg. 4, 2.a.i: Eliminate the sentence beginning 'County residents are encouraged....' The group accepted this change.
- Janet noted the herd district map was not on the website. The group agreed.
- Jacob suggesting including the herd district map in the addendum, which the group liked.
- Lita, pg. 10, #3, 2nd sentence: Rewrite it to read 'Assistance may come from Lake County departments, boards, policies and regulations.' The group accepted this change.
- Frank suggested a list could be put in the addendum.

Lita noted there were places where items separately listed out amending here and rewriting there, which could be combined. Steve reminded 3.a had been taken out completely. Lita suggested 3.b could read 'Amendments and additions to policies and regulations' or they could be more specific if they wanted. Similarly in #6, a lot of duplication existed in the list of 6.a through 6.e that could be boiled down.

- Steve, pg. 11, #6: Combine 6.a and 6.b by saying 'Developing or amending land use plans or policies.' He said Jacob could have the freedom to look at the possibility of making the same points in fewer steps and to combine some of those.

Jacob confirmed with the Board that they were good with the changes made since the last draft. He would incorporate those as general text in the next draft.

John asked about the herd law on pg. 4. Jacob clarified that it said whose responsibility it was [to do the fencing]. John understood but that wasn't what this said. Steve added that fencing in was to the owner or leasee's land. Abigail noted that fencing out was the homeowner's responsibility. Jacob suggested that he could clarify that one.

Wally shared a reading list with the Board members that pertained to farming, ranching and food. (See attachments to minutes in the August 2018 meeting file for staff report.)

MINUTES (8:55 pm)

Motion by Janet Camel, and seconded by Frank Mutch, to approve the July 11, 2018 meeting minutes as written. Motion carried, all in favor.

OTHER BUSINESS

None.

Steve Rosso, chair, adjourned the meeting at 8:56 pm.